

INSIDE

Health Care Management News

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Special points of interest:

- OIG is encouraging self disclosure of Stark violations.
- The U.S. will criminally prosecute hospitals if they suspect anti-kickback violations.
- A HRSA Guide provides guidelines for assessing physician need.
- Hospitals need to establish a qualified relocation program.
- The Ricardo Group is uniquely experienced in physician programs.

PHYSICIAN RELOCATION PROGRAM ARE YOU IN COMPLIANCE?

The Office of the Inspector General (OIG) issued "An Open Letter to Health Care Providers" on April 25, 2006 offering self disclosure guidance on the federal physician self-referral law (referred to commonly as "Stark"). This letter reflects OIG's increasing flexibility in resolving past Stark violations when self-disclosed. However, tread carefully. The Center for Medicare and Medicaid Services (CMS) and the Department of Justice (DOJ) also have jurisdiction and they have not yet offered comparable guidance.



In light of the Tenet Alvarado case (see article below on *U.S. versus Weinbaum*) it is strongly recommended that you audit all past relocation and recruitment arrangements, assess your liability, and seek legal counsel on how to approach the various agencies. Next, make sure you're compliant with all present and future contracts (see *Physician Relocation Checklist* on page 2).

U.S. v. WEINBAUM ET AL KNOW THE IMPLICATIONS!

U.S. v. Barry Weinbaum, Tenet Health Systems, Alvarado Hospital
U.S. District Court Southern District of California, San Diego, CA

(Indictment July 2002: Conspiracy; Offering and Paying Remunerations; Aiding and Abetting) (Criminal Case No. 03-CR-1587L)

The Ricardo Group, Inc. provided expert testimony on Community Need, Medically Underserved Areas (MUAs), Health Professional Shortage Areas (HPSAs), Physician Relocation Agreements, Physician Practice Establishment Standards and Procedures.

This case should make every hospital organization, CEO, executive, corporate attorney, and Board reflect on their own physician recruitment policies and programs. It is a case that at first blush makes every hospital shun the idea of aiding in the recruitment of new physicians, even though it has been an industry practice for decades.

A unit of Dallas-based Tenet, its 311-bed Alvarado Hospital Medical Center and former CEO Barry Weinbaum were charged with violating criminal anti-kickback laws and is accused of funneling more than \$10 million over a 10 year period to host practices through recruitment and relocation packages for new physicians. According to the government in these criminal proceedings, they are accused of bribing physicians to refer patients to the company's San Diego Hospital. After more than a year and two trials the case resulted with two hung juries.

This outcome just adds to the confusion about the Office of the Inspector General (OIG) and U.S. Government acceptance and understanding of the hospital's critical role in supporting the establishment of new physicians into private practice. Federal law allows hospitals to pay certain relocation expenses to recruit physicians with needed specialties but forbids hospitals to pay physicians to refer patients. As a result, Hospitals need to carefully walk a fine line.

PHYSICIAN RELOCATION CHECKLIST COVERING THE ESSENTIALS

Hospitals and physicians should examine both their past and present physician recruitment activities to mitigate potential legal risks.

In our review of the U.S. Government, OIG, and Stark's recent considerations, we recommend hospitals and physicians engaged in recruitment activities take the following precautions:

- **Define Hospital Service Area:** Using hospital admission volume sorted by patient zip code, determine contiguous service area.
- **Document Community Need:** Enlist an independent firm to perform physician need reviews

annually coupled with an updated confirmatory assessment at the time of recruitment.

- **Identify all HPSA and MUA designations in the County.** Match zip codes with the census tracts and populations identified by the government as having the greatest need for physicians.
- **Establish a Reasonable Compensation and Relocation Package:** Obtain and document an independent opinion of the relocation package. The compensation and overhead expenses need to be compared with published standards.
- **Define Practice Situation, Host Arrangements,**

and Accountability: Formal agreements should be established between Hospital, Host Practice, and Recruit. Define in writing the obligations and expectations of each party.

- **Conduct Due Diligence:** Credential and investigate recruits as well as host physicians.
- **Enforce Compliance:** Delegate enforcement of contracts to an external compliance officer to audit and enforce all physician and host contract obligations.
- **Establish Independent Advisory Panel:** The panel's purpose is to provide direction, oversight, and approval.

The Ricardo Group Structures Qualified Physician Retention and Recruitment Programs.

DEFINE COMMUNITY "NEED"

DOES THE UNITED STATES GOVERNMENT AGREE?

According to the Health Resources and Services Administration's (HRSA) State Health Workforce Data Resource Guide determining Physician Need is not a quick or simple exercise.

The government publication describes several different methods and models to use, and annotates that discussion with respective data sources, strengths, and weaknesses. The Guide also cautions about potential problems with supply data and recommends the use of experts familiar with the data and its limitations.

It is generally recognized that the health care marketplace has a number of shortcomings that lead to

the imbalances witnessed in communities. Evaluating physician "Need" simply by counting physicians and comparing it to the population census is not an accurate assessment.

A whole host of questions need to be explored in order to capture and fully appreciate the changing dynamics of each respective community.

Some of the questions to explore:

- ◆ Is the supply of physicians adequate to meet the patient volume today and in three to five years?
- ◆ Do the physicians have the right set of skills and training to provide high quality care?
- ◆ How old is the physician

workforce? Are doctors retiring, leaving practice, working part-time, restricting their practice?

- ◆ Do the physicians reflect the cultural and racial makeup of the population?
- ◆ Are there any geographical, language, or economic barriers limiting access?
- ◆ Is there a particular population, health care setting, or health problem that isn't adequately covered?
- ◆ Are any physicians suspended, hospital based only, or have changed practice specialty or scope?
- ◆ What areas has the local government designated?

HPSAS AND MUAS TWO GOVERNMENT INDICATORS OF NEED

The government's Shortage Designation Branch of HRSA has developed specific criteria to decide whether or not a geographic area or population group qualifies as a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA).

According to HRSA, more than 34 federal programs depend on these shortage designations in determining eligibility and funding preference, and about 20 percent of the U.S. population resides in primary medical care HPSAs.

HPSAs and MUAs are identified by census tracts. When a hospital performs a **Community Need Analysis** these census tracts need to be mapped using zip codes and major roads as references. These designations not only pro-

vide additional insight into the health care market but can be used to support recruiting physicians into the market



without running afoul of government regulations.

In determining physician need using HPSA and MUA criteria, incorporate the following factors into the analysis:

- ◆ Define a rational area for the delivery of medical services.
- ◆ Determine the ratio of physicians to the population.
- ◆ Look if physicians in contiguous areas are over util-

ized, excessively distant or inaccessible to the population being reviewed.

- ◆ Adjustments should be made for transient populations such as seasonal residents, tourists, and migratory workers.
- ◆ Physicians engaged in administration, research, and teaching should be eliminated.
- ◆ Adjust Physician count for Interns, Residents, Foreign Medical Graduates, Semi-Retired Physicians.
- ◆ Determine Insufficient Capacity by length of wait for an appointment, excessive office waiting time, emergency room volume, low utilization of health services, number of office and outpatient visits.

SUPPLY AND DEMAND WHY SOME STUDIES DON'T ADD UP

Hospitals often use a quick "black box" approach when determining whether there is a need to recruit physicians. While this approach is inexpensive, requires minimal staff time, uses purchased data fed into a computer formula, the results are far from accurate and usually misinterpreted.

The flawed conclusions drawn from these studies typically result when the users rely on purchased data and they don't recognize the limitations in the calculations. It is only one piece of a very complex puzzle.

Looking at the physician to population ratios of your

service area and comparing it to physician to population ratios on a national, state, urban, or rural level only tells you how you compare in the market and does not address "need".

Calculating the population's health care utilization rate by medical specialty provides a more accurate account of the market need for physicians. However, these "one formula fits all" calculations have to be checked and adjusted to reflect up-to-date market characteristics, changes in physician supply, specific market and population uniqueness, managed care

saturation, economic and geographic restrictions, to capture an accurate result.

One study won't provide a complete picture, however, a Comprehensive Analysis with yearly updates, and a Confirmatory Assessment upon recruitment will keep your recruitment and relocation program in compliance.



The Ricardo Group has performed over 100 Community Needs Assessments!

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Let us hear from you

We are working hard to make *Insides* an informative resource for you. Your comments and input help us provide comprehensive information on a variety of health care management topics. If you would like to be added to our email version of *Insides*, please let us know.

Ralph Wolf
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THE RICARDO GROUP, INC.

EXPERT WITNESS-U.S. VERSUS WEINBAUM ET AL

The Ricardo Group, Inc. is uniquely qualified to audit and assess prior Physician Relocation Programs against OIG compliance guidelines.

The Ricardo Group also has the necessary insight for structuring a new Physician Development Plan. Included is the experience required to perform a thorough **Community Needs Assessment**, develop a successful **Physician Retention Program**, and initiate an effective **Recruitment Strategy**.

This **Total Program** approach supports the large or small market hospital by creating a foundation for patient continuity and additional market growth.

TRG Services include:

- Community Needs Assessments including MUAs and HPSAs.
- Physician Recruitment and Relocation Reviews.
- Host Practice Audits
- Forensic Accounting and Litigation Support.
- Expert Witness Testimony.
- Group Practice Formation and Partnership Plans.
- Business Plan Development.
- Structuring for Venture and Traditional Financing.
- Litigation and Divorce Valuations.
- Medical Staff Planning
- Hospital Sponsored Physician and Residency Training Seminars.



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For-Profit and Non-Profit Hospitals, Physicians, Medical Groups, Management Service Organizations (MSOs), Independent Physician Associations (IPAs), Surgery Centers, Billing Services, Medical and Specialty Societies, Health Maintenance Organizations.